

EU/US SUMMIT, LONDON 18 MAY

Today's EU/US Summit has seen important progress in EU/US relations. It has resulted in the establishment of a basis for resolving the differences over extraterritorial sanctions which have cast a shadow over the relationship for many years. Also a major initiative has been launched under which the EU and US will both work to break down barriers to trade across the Atlantic and work more closely together to pursue multilateral liberalisation.

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The results of the Summit are set out in a series of joint statements and declarations:

- a statement on establishing a Transatlantic Economic Partnership;
- a declaration on the Transatlantic Partnership on Political Cooperation;
- an Understanding on Disciplines on Investment in Expropriated Properties: this includes the US commitments on waivers under Titles III and IV of the Helms/Burton Act;
- a joint statement on cooperation against international terrorism;
- a joint statement on cooperation to counter proliferation of weapons of mass destruction;
- a joint statement on our approach to developing the energy resources of the Caspian Sea basin;
- the Senior Level Group Report (SLG).

In addition, the EU has explained its interpretation of the texts relating to sanctions; and the US has explained its intentions vis-a-vis waivers under the Iran Libya Sanctions Act.

The range of these texts reflects the extent of our cooperation. The key issues addressed today were:

- (a) Finding a way to tackle our differences over sanctions legislation and to reinforce our cooperation in areas such as proliferation and counter-terrorism.
- (b) Agreeing to launch a new transatlantic trade initiative in the shape of the Transatlantic Economic Partnership.

NOTES TO EDITORS

Copies of all the texts referred to above are available from News Department.

ENDS

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## The Transatlantic Economic Partnership

1 The transatlantic economic relationship is underpinned by the most important trade and economic links in the world. In order to strengthen further these links to the benefit of our people and firms, we have decided to build on the New Transatlantic Agenda signed in Madrid in 1995. This initiative will reinforce our cooperation and joint leadership in international economic relations and fora.

2 The European Union (EU) and the United States (US) share the world's largest and most complex economic relationship. Two-way trade represents around one-fifth of each other's total for goods and one-third for services. Furthermore the US and EU each account for approximately half of the other's foreign direct investment abroad. The prosperity of our populations is intertwined to an ever-increasing extent; and as the European Union has grown and deepened its integration, this process has accelerated.

3 We have a fundamental interest in a dynamic, respected system of international trade rules. The size of our economies and the volume of transatlantic trade and investment have a significant effect on this system. Past multilateral efforts to open markets have often been led by the US and EU. As we look ahead, it will be important for the US and EU to demonstrate our support for the further opening of markets world-wide.

4 In 1995, we committed ourselves to expand and deepen cooperation on economic issues through the New Transatlantic Agenda (NTA) by taking concrete steps to strengthen the multilateral trading system and enhance the transatlantic economic relationship. We are pleased with the progress of the NTA so far. Under the NTA, we have laid the basis for multilateral trade negotiations and have finalised agreements on mutual recognition of testing and conformity assessment, customs co-operation and equivalency in veterinary standards and procedures. And in December 1997 we committed ourselves to enhance our regulatory cooperation while facilitating consumer protection.

5 We now believe the time has come to build on the NTA's highly significant achievements. Accordingly, we agree to reinforce our close relationship through an initiative involving the intensification and extension of multilateral and bilateral cooperation and common actions in the field of trade and investment. Our reinforced partnership can be instrumental in setting the agenda for a more open and accessible world trading system and at the same time can greatly improve the economic relationship between the EU and US, reduce frictions between us, and promote prosperity on both sides of the Atlantic.

6 The partnership will encompass multilateral and bilateral elements as outlined below.

### Multilateral action

7. In keeping with our leading role in the world trade system, we reaffirm our determination to maintain open markets, resist protectionism and sustain the momentum of liberalisation. The most effective means of maintaining open markets and promoting the expansion of trade is the continued development and strengthening of the multilateral system. The EU and US will give priority to pursuing their objectives together with other trading partners through the World Trade Organisation. Today's WTO Ministerial Conference will play an important role in carrying forward the implementation of the WTO built-in agenda and in laying the groundwork for further multilateral negotiations leading to broad-based liberalisation.

8. As part of our effort to strengthen further the multilateral system and seek wider trade liberalisation, our shared objectives are:

- a) The full implementation of WTO commitments and respect for dispute settlement obligations;

- b) Ambitious objectives and offers for the liberalisation of services in forthcoming WTO negotiations;
- c) The multilateral negotiations for the continuation of the reform process in agriculture in full conformity with Article 20 of the WTO Agreement on Agriculture;
- d) The intensification of forward-looking work in the WTO on trade facilitation;
- e) A broad WTO work programme for the reduction on an MFN basis of industrial tariffs and the exploration of the feasibility of their progressive elimination within a timescale to be agreed;
- f) The adoption of common positions on the respect for and further improvement of the intellectual property rights identified in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS);
- g) The development of common approaches in appropriate multilateral fora on investment, competition, public procurement and trade and the environment;
- h) Cooperation on the accession of new members and the better integration of LLDCs in the multilateral trading system;
- i) The development of a comprehensive work programme for electronic commerce in the WTO covering trade-related aspects and will continue the current practice of not imposing customs duties on electronic transmissions;
- j) Support for the observance of internationally recognised core labour standards and the goal of reaching agreement on an ILO declaration and follow-up mechanism, noting the important role of the social partners in the process, and rejecting use of labour standards for protectionist purposes; and support for the continuation of the dialogue on measures in the relevant fora to combat corruption.

#### Bilateral action

9. The EU and the US will intensify their efforts to reduce or eliminate barriers to trade and investment between them. This will be done in ways which are in full conformity with their international and, in particular, WTO obligations and supportive of the primary goal of multilateral liberalisation making as much progress as possible before 2000. Such efforts will expand transatlantic commerce and reduce frictions, benefiting both our peoples. We will maintain high standards of safety and protection for health, consumers and the environment. Our partnership will not create new barriers to third countries.

10. We will focus on those barriers that really matter to transatlantic trade and investment and to this end we will aim in particular at the removal of those regulatory barriers that hinder market opportunities, both for goods and for services. We will concentrate specifically on the following:

- a) technical barriers to trade in goods, reinforcing our efforts for the elimination or substantial lowering of the remaining barriers, while further pursuing our commitment to high health, safety and environmental standards;
- b) services, with the aim of substantially improving opportunities for market opening to the benefit of consumers and small, medium and larger enterprises;
- c) agriculture, with the objective of strengthening our regulatory cooperation in the field of human, plant and animal health issues, including biotechnology, while recognising the importance of continuing to improve our respective regulatory processes and of improving our scientific cooperation.

- d) government procurement to increase and facilitate access to public procurement markets, including by enhancing the compatibility of electronic procurement information and government contracting systems;
- e) intellectual property as identified in the Agreement on TRIPS in order to improve the protection of rightholders and to reduce costs.

11. We will build on efforts already underway for goods but extending to services, to cover as wide a range of barriers and sectors as possible identifying the priorities both for the near and longer term. Instruments to achieve this will be:

- a) The mutual recognition of testing and approval procedures, of equivalence of technical and other requirements and, in certain areas, where appropriate, the progressive alignment or, where possible, the adoption of the same standards, regulatory requirements and procedures adopting internationally agreed standards where possible;
- b) The intensification of the dialogue between scientific and other expert advisers, standard setting bodies, and regulatory agencies;
- c) A high degree of transparency and consultation with all interested parties.

12 Within the framework of our bilateral partnership we will seek to advance our shared values in the areas of labour and environment.

13 We will explore the scope for further cooperative dialogue and greater compatibility of procedures between our competition authorities.

14 We will maintain and extend our work on electronic commerce as set out in the joint statement at the Washington Summit of December 1997.

#### Extending the Transatlantic Dialogue

15 The EU and US recall the imaginative and practical approach of EU and US business in the Transatlantic Business Dialogue which has contributed directly to many of the NTA's successes, such as the Mutual Recognition Agreement. We urge the TABD to continue and extend its valuable contribution to the process of removing barriers to trade and investment. We reaffirm our commitment in the New Transatlantic Agenda to promote dialogue between representatives of consumer and labour interests as illustrated by the helpful second meeting of the Transatlantic Labour Dialogue held in London in April. We invite interested non-governmental organisations to participate and extend this dialogue on consumer protection, scientific, safety and environmental issues relevant to international trade as a constructive contribution to policy making.

16 In line with our commitment to encourage greater transparency in the work of international trade bodies, we will seek to facilitate the closer association of business and other interested non-governmental constituencies with the activities of the WTO and other international trade organisations, as well as with our bilateral activities.

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17 Within the framework provided by the NTA we will establish a dynamic process yielding concrete results with the intention of applying them, where agreed, at the relevant levels of government in the EU and the US; and to this end we will pursue the multilateral and bilateral actions set out in this statement as follows:

- a) Establish as soon as possible a Plan identifying areas for common actions both bilaterally and multilaterally, with a timetable for achieving specific results;

- b) Take all necessary steps to allow the early implementation of this Plan, including any necessary authority to start negotiations .

Nothing in this text constitutes an EU negotiating mandate.

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## TRANSATLANTIC PARTNERSHIP ON POLITICAL COOPERATION

1. Under the New Transatlantic Agenda, launched in December 1995, the United States and the European Union made a commitment to further strengthen and adapt our partnership to face new challenges at home and abroad. We recognised that our political and economic cooperation is a powerful force for peace, democracy and prosperity. We agreed to move to common action to achieve these ends. We have since taken specific steps to strengthen respect for human rights, to promote non-proliferation, to fight terrorism, to address crises in troubled regions and much more. Our experience has shown that, working together, the United States and the European Union are more effective in pursuing shared goals. When differences have emerged between us, however, this has reduced the effectiveness of our response.

2. In order to enhance our partnership, we undertake to intensify our consultations with a view to more effective cooperation in responding to behaviour that is inimical to the goals agreed in the New Transatlantic Agenda or which threatens international stability and security, in which we have a shared interest. We have instructed senior officials to undertake early consultations, when there is an evident risk of such behaviour. To this end, we have agreed to principles that will guide us:

(a) We will seek through exchanging information and analysis and through early consultations to pre-empt, prevent and, as needed, respond to such behaviour. Our objective is to achieve compatible and mutually reinforcing policy responses, which are practical, timely and effective.

(b) These responses should be carefully formulated as part of a coherent overall policy approach designed to change unacceptable behaviour. They should also be in line with international commitments and responsibilities.

(c) We will make full use of diplomatic and political action to achieve our objectives.

(d) Economic sanctions are another possible response. Their use requires careful consideration. In general they would be used only when diplomatic and political options have failed or when a problem is so serious as to require more far-reaching action.

(e) In such circumstances, the EU and US will make a maximum effort to ensure that economic sanctions are multilateral. They are likely to have the strongest political and economic impact when applied as widely as possible throughout the international community. Multilateral actions also distribute the costs of sanctions on the imposing parties more evenly. Whenever possible, effective measures taken by the UN Security Council are the optimal approach.

(f) When multilateral economic sanctions are imposed, our objective will be to exert the greatest possible pressure on those responsible for the problem, while avoiding unnecessary hardship and minimising the impact on other countries.

(g) Where wider agreement on economic sanctions cannot be

achieved, or in cases of great urgency, the EU and the US will consult on appropriate responses. In such circumstances either party could decide to impose economic sanctions.

(h) To ensure the resilience of our partnership in such circumstances:

- a partner will not seek or propose, and will resist, the passage of new economic sanctions legislation based on foreign policy grounds which is designed to make economic operators of the other behave in a manner similar to that required of its own economic operators;
- that partner will target such sanctions directly and specifically against those responsible for the problem; and
- the partner not imposing sanctions will take into account the interests of the other in formulating its own policy and continue to pursue, in its own way, those goals which are shared.

(i) It is in the interest of both partners that policies of governmental bodies at other levels should be consonant with these principles and avoid sending conflicting messages to countries engaged in unacceptable behaviour. Both partners will work to achieve this goal.

3. The US and the EU will consult closely, including at senior levels, in applying these principles and resolving differences. Each side will also develop the necessary internal procedures to ensure effective implementation of the principles.

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## Understanding with Respect to Disciplines for the Strengthening of Investment Protection

The United States and the European Union (hereinafter, 'the participants').

Recalling the Understanding of April 11, 1997, which stated, inter alia:

'The EU and the U.S agree to step up their efforts to develop agreed disciplines and principles for the strengthening of investment protection, bilaterally and in the context of the Multilateral Agreement on Investment (MAI) or other appropriate international fora. Recognizing that the standard of protection governing expropriation and nationalization embodied in international law and envisioned in the MAI should be respected by all States. These disciplines should inhibit and deter the future acquisition of investments from any State which has expropriated or nationalized such investments in contravention of international law, and subsequent dealings in covered investments.'

Wish to confirm in this Understanding their intention to propose jointly in negotiation of the Multilateral Agreement on Investment (MAI) the disciplines reflected in Part 1 of this Understanding and to apply those disciplines as a matter of policy, in accordance with Part II prior to entry into force of the MAI.

### I. DISCIPLINES

#### A. General disciplines

1. The participants reaffirm their commitment to strengthen the international protection of property rights in the context of investment protection.
2. The participants will make joint or coordinated exhortations, diplomatic efforts and declarations on the observance of international law standards of expropriation. The importance of taking remedial action when such standards have not been observed eg. through restitution or the payment of prompt, adequate and effective compensation) and the undesirability of investment in property expropriated in contravention of international law, which permits the expropriating state to benefit from measures that are illegal and contrary to sound investment policy.
3. The participants will establish a Registry of claims that allege that a state other than one of the participants has expropriated property in contravention of international law (hereinafter 'the Registry'), in accordance with Annex A. Inclusion of a claim in the Registry does not imply any judgement as to the validity of the claim.
4. Each participant will assess and take appropriate account of information that appears in the Registry, in considering requests for government support or applications for commercial assistance with respect to covered transactions in registered properties.



5. The participants will urge the adoption by international financial institutions of policies and programmes that promote a favorable investment climate by encouraging resolution of expropriation claims and discouraging covered transactions in expropriated properties.

B. Specific Disciplines

1. Each participant will apply specific disciplines, described below, to the following properties (herein called 'expropriated properties'):
  - (a) a property that is the subject of a decision of an international arbitral tribunal or a final decision by a court of the expropriating state establishing that a property has been expropriated in contravention of international law;
  - (b) a property in respect of which it has been concluded in accordance with modalities to be elaborated among the participants or under the MAI that a claimant has a claim, well-founded in law and in fact, of expropriation in contravention of international law and has not been afforded recourse to an adequate judicial or arbitral remedy; or
  - (c) a property in respect of which it has come to the view, as provided in paragraph I.B.3(d), that the property has been expropriated in contravention of international law.

(Additional details are provided in Annex B.)

2. In the circumstances described above, each participant will apply specific disciplines, as follows:
  - (a) joint or coordinated diplomatic representation to the expropriating state;
  - (b) denial of government support for covered transactions in expropriated properties;
  - (c) denial of government commercial assistance for covered transactions in expropriated properties; and
  - (d) publication by each participant of an enumeration of expropriated properties and public statements by each participant discouraging covered transactions in the properties therein enumerated.
3. In addition, where a participant is of the view that, in a particular country, there has been a record of repeated expropriations in contravention of international law, and that therefore particular care is warranted:
  - (a) That participant will inform the other participant of this view and provide information explaining the reasons for it, including, as appropriate, information about specific claims. It will provide additional information upon request or if supplemental information becomes available.
  - (b) The other participant will make that information available to (i) the government agencies responsible for deciding on government commercial assistance and government support and (ii) its investors who so request.

- (c) The other participant will expeditiously evaluate and take fully into account that information in reviewing individual requests for commercial assistance for covered transactions and will give proper consideration to the question whether there has been an expropriation in contravention of international law before taking a decision on such requests.
- (d) In cases where the other participant comes to the view that an individual property has been expropriated in such a country in contravention of international law, it will apply the disciplines described in paragraph I.B.2.
- (e) Participants will keep closely in contact and will inform each other of the actions which they have taken.<sup>1</sup>

1. The European Commission, on behalf of the EU, has had the opportunity to examine certain information relating to the expropriation of properties and the details of that examination and the conclusions drawn therefrom are set out in Annex D.

- 4. With respect to future expropriations in contravention of internal law, the participants will prevent, subject to applicable legal limitations,<sup>2</sup> covered transactions in expropriated property within the scope of paragraph 1(a) or (b) of this chapter.

#### C. Existing Investments

Given that the participants agreed in the April 11, 1997 Understanding to develop disciplines to inhibit and deter the future acquisition from the expropriating state and subsequent dealings in covered investments, the disciplines will not apply to:-

- 1. covered transactions related to an expropriated property or a right to an expropriated property that an investor of one of the participants acquired from the expropriating state before May 18, 1998, or
- 2. covered transactions by other investors of a participant that subsequently acquire that property or perty right.<sup>3</sup>

2. With respect to these legal limitations, the United States notes that, in connection with the introduction of legislation amending Title IV of the Libertad Acted as contemplated in Part II, the U.S. Administration would propose legislation providing authority to implement this provision. Such legislation would also address any other matters in this Understanding as to which the U.S. Administration determines that additional legislation authority is appropriate. The EU notes that capital movements to and from third countries are generally liberalized, but that limitations on capital movements relating to foreign direct investment can be imposed.

3. The disciplines will apply to covered transactions after May 18, 1998 that are related to property that has been reacquired by the expropriated state and to covered

transactions after May 18, 1998 that are related to expropriated property in addition to those acquired from the state prior to May 18, 1998. Thus, for example, the disclosures would apply to the renewal of rights, or the acquisition of anew or upgraded rights to expropriated property, if such renewal of rights or new or upgraded right is additional to the rights acquired from the state prior to May 18, 1998.

#### D. Definitions

The definitions in Annex C will apply in implementing the disciplines.

#### II. MODALITIES

1. The United States and the EU may wish to invite other countries to join them in applying these disciplines on a policy basis.
2. In addition, while this Understanding constitutes a political arrangement reflecting the participants' intention to apply these disciplines on a policy basis, the participants will make a joint proposal in the MAI, which, upon entry into force, will be an agreement binding under international law.
  - (a) This joint proposal will include institutional mechanisms necessary to implement the disciplines on an MAI-wide basis and adaptations of the existing MAI text.
  - (b) Even after entry into force of the MAI, it may be appropriate for certain disciplines to continue to apply bilaterally.
3. The participants will review the implementation and assess the effectiveness of the disciplines periodically or at any time at one of the participant's request.
4. The U.S. Administration will continue intensive consultations with the Congress with a view to obtaining an amendment to Title IV of the Libertad Act that would provide authority for a waiver that would apply, with respect to the EU, without a specific time limit, so long as this Understanding is in effect. Application of the disciplines and exercise of such waiver authority will be simulatenous.
5. The U.S. Administration is prepared, in the light of the EU's developing efforts to promote democracy and human rights in Cuba, to take soundings of Congressional opinion and consult Congress with a view to obtaining a Title III waiver provision that would have no specific time limit, so long as these efforts continue and bearing in mind the duration of the presumption of a Title III waiver in the April 1997 Understanding.
6. Taking into account paragraph 5(b) of Annex B, neither participant will prevent the making of settlements with respect to property as to which there is a claim of expropriation in contravention of international law while this Understanding is in effect.
7. The participants will consider whether there should be future work to further their objective of strengthening the international protection of property rights in the context of investment protection.

### Part III

#### Annex A

##### Registry of Claims Alleging Expropriation in Contravention of International Law

1. A claim that alleges a contravention of international law would be included in the Registry upon submission of all required information in support of the allegation that the property was expropriated in contravention of international law, including: the nationality of the claimant at the time of the expropriation and at the present, the identification and location of the property alleged to have been expropriated, proof of ownership of the claimed property, the facts of the alleged expropriation (eg. the date of the alleged expropriation and a description of the measures alleged to have constituted an expropriation), the value of the property, any efforts by the claimant to exhaust local remedies or otherwise to resolve the claim and whether the allegedly expropriating state has agreed to compulsory and binding dispute settlement, such as pursuant to a contractual arbitration clause, ad hoc agreement or a bilateral investment agreement.
2. A property would be removed from the Registry if the claimant failed to provide annually updated information the parties settled the claim or the state complied with an arbitral award or with a judicial decision that was consistent with the international law of expropriation, with respect to the subject property.
3. With respect to a property alleged to have been expropriated prior to the effective date of the disciplines, the claimant would have one year from the establishment of the Registry to submit information for inclusion in the Registry.
4. Information regarding a particular registered claim would be made available, upon request, to: investors or claimants, the participants (including their respective commercial assistance entities) and other interested governments.
5. The participants will need to address other details regarding the Registry. For example, in the context of the proposed Registry to be administered by the MAI Secretariat, the participants have contemplated that the Secretariat would charge fees to cover the costs of administering the Registry. Similar arrangements may be appropriate for a Registry that applies only between the United States and the EU.

#### Annex B

##### Specific Disciplines

Upon entry into force of the MAI, and, prior to that, on a policy basis, this Annex will provide additional guidance with respect to the implementation of the specific disciplines, as follows:

1. The participants will apply the disciplines with respect to an arbitral award or judicial decision described in paragraph (1) (a) of Part I.B if the expropriating state fails to comply with the award or decision the period specified by the award or decision or by an applicable international agreement, applicable international

instrument, or, if no such period is specified, if the expropriating state's failure to comply is not legally justified.

2. The participants will develop modalities for the application of paragraph B.1(b) of Part I. Those modalities will be based on the use of all available information and will address such matters as costs. Non-cooperation of the expropriating state should not prevent a conclusion under paragraph B.1(b) of Part I.
3. A participant, in informing another participant of its views on whether there is an established record of repeated expropriation in contravention of international law, as contemplated by paragraphs 3 of part B. will take account of the following factors:
  - (a) whether there is a large number of value of claims of expropriate in contravention of international law against a state, including inter alia any claims that have been evaluated by an arbitral tribunal, the judiciary of the expropriating state, or an administrative mechanism of the state of the claimants' nationality;
  - (b) whether the expropriating state has offered compensation consistent with international law, a domestic procedure offering compensation consistent with international law, or international arbitration of the claims;
  - (c) whether the expropriations were carried out for a valid public purpose;
  - (d) whether the expropriations were discriminatory;
  - (e) whether the expropriations were carried out without due process.
4. Properties in respect of which the claim has been settled or where the claimant's government advises that it is not actively pursuing the claim or that the unsettled claim has been abandoned by the claimant, are excluded from the scope of this Understanding.
5. The participants will stop applying the disciplines with respect to an expropriated property:
  - (a) once the expropriating state has submitted the dispute to international arbitration or international judicial settlement has made restitution or has provided prompt, adequate and effective compensation to the claimant; or
  - (b) upon request of the claimant.

#### Annex C

#### Defintions

##### 1. Covered transactions

A 'covered transaction' means any future transaction related to property expropriated by a state other than a participant<sup>4</sup> insofar as it gives rise to:

- (a) a direct ownership interest in such a property (eg.

purchase of expropriated property, obtaining mineral rights (to the extent that these were included in the expropriated property));

- (b) control of all or part of an expropriated property (eg. lease of the expropriated property or a management or development contract);
- (c) the acquisition of effective control or a determining interest in an entity owning or controlling expropriated property under (a) or (b) insofar as the property constitutes a significant proportion of the assets of that entity or the expropriated property is a fundamental element of the transaction.<sup>5</sup>

The term 'covered transaction' does not include transactions that are limited to the purchase of goods or services produced on expropriated property or to the provision of goods or services to the investor.<sup>6</sup>

## 2. Government commercial assistance

'Government commercial assistance' means assistance as equity participation, loans, grants, subsidies, fiscal advantages, guarantees and insurance.

## 3. Government support

'Government support' means the forms of support normally performed by embassies and commercial, foreign and trade ministries.

4. A covered transaction is 'related to' an expropriated property when it is specifically in support of the acquisition and constitutes an indispensable part. In such circumstances, it extends to the financing, guarantee or insurance of the acquisition.

5. In assessing whether a transaction gives rise to the acquisition of a determining interest, participants will consider whether the transaction gives rise to a direct investment relationship, in light, inter alia, of criteria contained in the OECD's 1992 publication regarding the benchmark definition of foreign investment.

6. In addition, recognizing that some commercial assistance agencies support equity funds focused on particular regions or countries, a transaction by such an equity fund in a portfolio of which expropriated property is an evident asset should be considered a covered transaction in the sense that the participants would refrain from providing loans, grants, insurance or guarantees in such circumstances.

Annex D

I have taken note of the information provided by the US on expropriations of property in Cuba owned by United States nationals following the 1959 Cuban Revolution.

The Commission has discussed the matter with the United States, which provided us with information related to the working methods of the US Foreign Claims Settlement Commission (FCSC) and the historical record. We have also examined

information related to expropriations, provided by the US in support of its view that there was an established record of repeated expropriations in Cuba, including a small number of the 5911 claims certified by the FCSC.

In the course of these discussions, we were able to identify a number of cases where, having regard to the discriminatory provisions on Cuban Law 851, it appears that the expropriations were contrary to international law.

Accordingly, in these cases it is reasonable to assume that the provisions of paragraph I.B.2 agreed between the United States and the European Union in the framework of the Understanding with Respect to Disciplines for the Strengthening of Investment Protection, on 1998, would be applied.

If, as the United States indicates, the cases mentioned above are typical of the other expropriations, in our view, it is reasonable to assume that, if those other expropriations were reviewed, as provided for under paragraph I.B.3, this would lead to a similar result.

#### Understanding on Conflicting Requirements

The United States and the European Union, recalling the Understanding of April 11, 1997, which stated, inter alia, that they would 'work together to address and resolve through agreed principles, the issue of conflicting jurisdictions, including issues affecting investors of another party because of their investments in third countries', wish to confirm in this Understanding their intention to propose jointly in negotiation of the Multilateral Agreement on Investment the following article regarding conflicting requirements:

- (1) 'In contemplating new legislation, action under existing legislation or other exercise of jurisdiction which may conflict with the legal requirements or established policies of another Contracting Party and lead to conflicting requirements being imposed on investors or their investments, the Contracting Parties concerned should:
  - (a) have regard to relevant principles of international law;
  - (b) endeavour to avoid or minimise such conflicts and the problems to which they give rise by following an approach of moderation and restraint, respecting and accommodating the interests of other Contracting Parties;
  - (c) take fully into account the sovereignty and legitimate economic law enforcement and other interests of other Contracting Parties;
  - (d) bear in mind the importance of permitting the observance of contractual obligations and the possible adverse impact of measures having a retroactive effect.
- (2) Contracting Parties should endeavour to promote co-operation as an alternative to unilateral action to avoid or minimise conflicting requirements and problems arising therefrom.
- (3) Contracting Parties should on request consult with each other in accordance with paragraph x of Article y (Consultations section of Dispute Settlement provisions) and endeavour to arrive at mutually

- acceptable solutions to such problems, it being understood that such consultations would be facilitated by notification at the earliest stage practicable.
- (4) If the consultations under paragraph 3 do not result in a mutually satisfactory resolution of the claim either of the Contracting Parties can bring the matter to the attention of the Parties Group. Pursuant to Article XX (the Parties Group), the Parties Group will consider the matter in the light of the agreed principles stated in paragraph 1, with a view towards resolving the matter.
  - (5) The Parties Group may review in accordance with Article .. (Review) the implementation and assess the effectiveness of this Article.'

NB: It is understood that nothing in the MAI excludes this provision from MAI dispute settlement.



## EU/US DECLARATION ON COMMON ORIENTATION OF NON-PROLIFERATION POLICY

### The International Non-proliferation Regime

The US and the member states of the EU share a strong common interest in non-proliferation of weapons of mass destruction and their delivery systems.

The US and the EU support universal adherence to international treaties covering weapons of mass destruction, including the Treaty on the Non-Proliferation of Nuclear Weapons, the Chemical Weapons Convention, the Biological and Toxin Weapons Convention and the Comprehensive Test Ban Treaty. They are cooperating to ensure full and effective implementation of these treaties. This includes the effective implementation of the recently-strengthened safeguards system of the International Atomic Energy Agency and verification procedures being implemented pursuant to the Chemical Weapons Convention and the Comprehensive Test Ban Treaty. They are also working toward agreement on an effective Protocol on verification for the Biological and Toxin Weapons Convention.

They are active participants in international export control regimes and arrangements:

- The Nuclear Suppliers Group.
- The Zangger Committee of countries committed to cooperation in interpretation and implementation of the export clause (Article III.2) of the Non-Proliferation Treaty.
- The Missile Technology Control Regime (MTCR).
- The Australia Group of suppliers of goods and dual-use equipment potentially relevant to chemical or biological weapons.

Among their other responsibilities, the regimes provide mechanisms for the exchange of information about programmes and activities of concern in the area of weapon proliferation which they address.

### Export Control Policy

Whilst promoting international trade and opportunities, and consistent with other relevant international obligations, the EU and US take as a particularly important objective the denial of assistance to programmes of weapons of mass destruction and means of delivery. This includes dual-use goods and technology subject to export control. EU member states and the US have adopted policies and given guidance to licensing officials to prevent any export of controlled goods when they believe they might be used in programmes of weapons of mass destruction and their delivery systems. In this context, they should take into account, inter alia, evidence of an importer's prior association with such programmes.

The EU has adopted a comprehensive legally-binding Dual-Use Regime of export controls which contains stringent catch-all provisions covering equipment that might be used in or in connection with programmes of weapons of mass destruction.

### Regions of Proliferation Concern

The EU and the US have discussed regions of proliferation concern, including the Middle East and South Asia.

In this context the US and the EU have recently noted their continuing serious concern about efforts by some countries in the Middle East and South Asia to acquire missile technology and their capability to produce weapons of mass destruction. The EU noted that such concerns should figure in its political contacts with these countries, notably Iran.

The EU and the US reaffirmed their support for the work of UNSCOM in ensuring Iraq's implementation of UN Security Council Resolutions on the elimination of its weapons of mass destruction.

#### EU-US Consultation and Information Exchange

The US and the EU hold regular consultations on non-proliferation and will strengthen their close ties in this field.

The two sides also recognise that effective implementation of export controls will be greatly enhanced by the timely exchange of any relevant information about programmes and activities of concern. To strengthen existing cooperation in this area the two sides have agreed to:

- Additional information sharing in their regular meetings.
- Give further consideration, including the appropriate involvement of experts, to proposals to establish improved communications and data transmission relevant to non-proliferation export controls. Due consideration will be given to practical aspects of this concept.
- Enhanced bilateral information exchanges.

#### Political Action with Suppliers

EU countries and the US have engaged key suppliers. Several European leaders and Foreign Ministers have raised their concern directly with their Russian counterparts about Russian technological assistance to Iran's ballistic missile program. These concerns have been reinforced in contacts between the EU troika and Russian counterparts. The EU and US welcome actions taken by Russia to strengthen its export control system.

The US is open to a trilateral meeting with the EU and Russia on non-proliferation issues, but believes that careful preparation will be needed for such a meeting to be useful.

#### Agenda for Further Cooperation

The EU and US intend to continue working closely together to advance their common non-proliferation objectives. Some items on the agenda or work in the coming year are:

- Coordination of export control assistance programs to third countries. Exchanges of information about ongoing programmes have already occurred.
- Cooperation to improve export control implementation.
- Consultation to ensure that intangible technology transfers do not contribute to proliferation. Ideas in this area have been advanced by both sides.
- Best practice in export control implementation, including discussion of means to strengthen verification of end-use and to prevent diversion through third countries. Controls of non-linked items (catch-all), software and technology.

## EU/US STATEMENT ON CASPIAN ENERGY ISSUES

- The United States and the European Union recognise the importance of Caspian Basin oil and gas resources in contributing to the economic prosperity, energy security, and stability of the region.
- These resources will be an important addition to world oil and gas supplies and require secure access routes to world markets.
- Essential to this development will be the early availability of multiple pipelines. Major export pipelines from the Caspian will accordingly contribute to the secure delivery of an important new source of world energy supplies.
- The European Union's INOGATE programme is designed to promote the security of energy supplies. It includes work on: revitalisation of the existing transmission network and on new oil and gas pipelines across the Caspian, Black Sea region and westwards to Europe; urgent renovation of hazardous infrastructure; strengthening regional cooperation; compliance with international standards; reform of the region's energy sectors; and protection of foreign investments. The European Union's TRACECA project supports the development of an east-west transport and trade corridor from Central Asia, across the Caspian Sea, the Caucasus, and the Black Sea to Europe.
- The United States strongly endorses commercially and environmentally sound projects to develop Caspian energy resources and their transport to international markets. US technical assistance and training programmes are helping many of the Caspian states improve their legal regimes to encourage private investment in energy development and transport. The United States underscores that the Caspian Pipeline Consortium project is a critical component of a commercially driven multiple pipeline system for the entire region. The United States has provided a grant to Turkmenistan to complete a feasibility study for a trans-Caspian gas pipeline.
- Commercial considerations will first and foremost determine decisions on the development of energy projects and export routes. It is the private sector that will make the investments and take the risks. Projects therefore need to be economically viable and competitive. They must also meet the highest environmental standards.
- The United States and the European Union welcome the progress made by the littoral states towards formulating a legal regime for the Caspian that will enhance rapid development of the region's energy resources. They express the hope that the littoral states will reach early agreement.

## STATEMENT OF EU/US SHARED OBJECTIVES AND CLOSE COOPERATION ON COUNTER-TERRORISM

1. The United States, the European Union and its member states are strategic allies in the global fight against terrorism - a grave threat to democracy, and to economic and social development. They oppose terrorism in all its forms, whatever the motivation of its perpetrators, oppose concessions to terrorists, and agree on the need to resist extortion threats. They condemn absolutely not only those who plan or commit terrorist acts, but also any who support, finance or harbour terrorists. They recognise that terrorism operates on a transnational scale, and cannot effectively be dealt with solely by isolated action using each individual state's own resources. They work together to promote greater international cooperation and coordinated effort to combat terrorism by all legal means and in all relevant bilateral and multilateral fora - from the Transatlantic Dialogue to the United Nations.

### The International Legal Framework

2. Extradition and mutual legal assistance arrangements are in operation or will be developed between EU partners and the United States. The EU and US cooperate in the United Nations framework to elaborate the necessary international legal instruments for the fight against terrorism. They work in tandem to promote universal adherence to the eleven international counter-terrorism conventions. EU partners contributed to the rapid and successful negotiation of the most recent UN Convention (for the Suppression of Terrorist Bombings) based on a draft proposed by the US. Now they are cooperating to consider the terms of a draft UN Convention on the Suppression of Nuclear Terrorism.

### Areas of current EU/US mutual interest

3. (i) Terrorist Fund-raising: EU partners are pooling their knowledge and experience to work to cut off terrorists' sources of funding. They have agreed a set of action points, and their operational agencies are working on joint initiatives against terrorist funding. The US participated in an EU seminar in 1997 which shaped this work, is briefed regularly on current developments in this key area, and will take part in a follow-up EU seminar in Vienna in October 1998.

(ii) Chemical/Biological Terrorism and other threats: During the UK Presidency the EU and US have shared their thinking and compared best practice in the areas of CB terrorism, Terrorist arms trafficking and Bomb scene management.

(iii) The Middle East Peace Process: The EU briefs the US regularly on its current 3-year programme of counter-terrorism cooperation to enhance the effectiveness of the Palestinian Authority in this key area, including an extensive programme of human rights training. To strengthen EU/Palestinian links still further in the fight against terrorism, a declaration creating a joint Security Committee was agreed in April 1998. The Committee now meets regularly to discuss security issues.

### EU/US Consultation and Information Exchange

4. Policy cooperation is developed bilaterally and at EU/US level. Operational cooperation, including intelligence-sharing, is handled bilaterally by national law enforcement agencies, and is given high priority. To identify and assess the scale of the terrorist threat, the EU member states and the US exchange information and assessments on terrorist trends and latest developments. The regular meetings

on counter-terrorism between the US and the EU Troika of the Second and Third Pillars are used to exchange views on all aspects of terrorism policy, including trends in countries of particular current concern in the Middle East and elsewhere. Information is also shared on significant developments on either side of the Atlantic, eg the creation of Europol, which will include terrorism within its remit soon after its launch. The US has updated EU partners on the impact of its decision last October to designate 30 foreign terrorist organisations.

#### Further Cooperation

5. While recognising the wide range of work successfully accomplished hitherto, both sides see scope to strengthen further their close ties in the field of counter-terrorism, and are working to do so - by additional information-sharing at their regular Troika meetings, enhanced bilateral intelligence exchanges, and sustained cooperation at the United Nations and in other fora to advance their common objectives.

## EU UNILATERAL STATEMENT

The EU welcomes the decisions and statements made today relating to the Helms-Burton and Iran/Libya Sanctions Acts. The EU considers that these, including the US non-paper of 17 May, form a single package and, taken together, offer the prospect of a lasting resolution of our differences with the US over these Acts. The Understanding with Respect to Disciplines for the Strengthening of Investment Protection and the Declaration on the Transatlantic Partnership on Political Cooperation are important political commitments and are of equal weight and status.

The EU recalls previous statements made in the General Affairs Council which made clear our strong opposition based both in law and in principle to the imposition of secondary boycotts and legislation with extraterritorial effect and retroactivity. Today's announcements reflect no change in our position, which is hereby confirmed.

Until the Disciplines for Strengthening Investment Protection are implemented, and a waiver is granted to the EU under Title IV of the Helms-Burton Act, we will continue to abide by the Understanding of 11 April 1997.

Thereafter, the EU will implement the disciplines for the strengthening of investment protection, and will not establish a WTO Panel against the US in respect of the Helms-Burton or Iran/Libya Sanctions Acts, in the following circumstances:

- as long as the waiver of Title III of Helms-Burton remains in effect;
- if the waiver authority for Title IV described in II.4 of the Understanding with Respect to Strengthening of Investment Disciplines has been exercised;
- provided no action is taken against EU companies or individuals under the Iran/Libya Sanctions Act, and provided waivers under that Act are granted.

For the EU, it is axiomatic that infrastructural investment in the transport of oil and gas through Iran be carried out without impediment.

However, this commitment on the part of the EU will not apply if one of the above conditions is not fulfilled or, by the time of the expiry of the President's term of office, no waiver without specific time limit in respect of Title III has been granted, as envisaged in II.5 of the same Understanding.

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US NON PAPER

In the context of agreement on all the issues under discussion:

- with regard to pending investigations under ILSA, the Secretary would exercise her authority under section 9(c) of the Act and determine that it is important to the national interest to waive the imposition of sanctions against the EU firm involved (Total), and,

- assuming the US and the EU continue the enhanced level of cooperation on non-proliferation, counterterrorism and other important issues, we expect that a review of our national interest in cases similar to South Pars, involving the exploration and production of Iranian oil and gas resources, would result in like decisions with regard to 9(c) waivers for EU companies.

- recognising the process in which the United States and EU have engaged with respect to Iran and our agreed texts on non-proliferation, counterterrorism and other matters, the United States is prepared to engage with the EU in a sustained process on Libya for consideration of waivers under section 9(c) of the Act to companies from the EU, as agreed in the April 11 1997 Understanding. In this regard, the United States will work together with the EU to achieve strict enforcement by all countries of UN Security Council sanctions against Libya.

NEW TRANSATLANTIC AGENDA  
SENIOR LEVEL GROUP REPORT TO THE EU/US SUMMIT  
LONDON, 18 MAY 1998

During the UK Presidency, we have made substantial progress in reaching goals set at the last Summit and overcoming differences which, if left unresolved, could limit our ability to work together.

We have cooperated on key foreign policy issues to enhance the effectiveness of EU and US diplomacy.

We have worked together to address the current crisis in Kosovo. We have provided support for the new reformist Government in the Republika Srpska. We drove forward together implementation of the Dayton agreement, in particular, refugee return, including through the recent Refugee Return Conferences of Sarajevo and Banja Luka, and supported economic reforms in Bosnia, as required by the International Financial Institutions.

Following up on the Joint Statement on Ukraine agreed in December 1997, a joint demarche was made to the Ukrainian authorities after the elections, stressing the critical importance of continuing political and economic reforms. We have identified further areas for possible cooperation, including common approaches on trade and investment issues, energy sector reform, civil society and nuclear safety. We have drawn up a five-point agenda for a common approach with the Russian Federation and all interested parties to the problem of nuclear waste management in North West Russia. We are arranging a joint training programme for election monitors in Slovakia to prepare for the 1998 general elections. We have cooperated closely on Turkey and on Cyprus. We are working together to address cross-border smuggling in Romania under the SECI initiative.

Elsewhere we have intensified our consultations on policy towards Iran, focusing on issues of common concern. We have developed closer cooperation on issues such as counter-terrorism and weapons of mass destruction. We have both condemned India's recent decision to conduct nuclear tests. We have established a new, high-level EU-US coordination mechanism on the Middle East Peace Process. We have worked closely on human rights issues in Geneva. The EU and US are both taking steps to press Burma to respect human rights and democratic principles.

We enhanced the impact of our assistance efforts through close coordination of European Commission and USAID programmes. Among our many cooperative endeavours, we have supported good governance in Central America, delivered humanitarian aid to North Korea and emergency assistance to victims of El Nino in Central and South America, launched efforts to combat violence against women, and implemented joint projects to help destitute women in Bangladesh. We co-chaired the May 5 Donor Support Group meeting for Afghanistan in London.

We have worked together to address global challenges, to promote international law enforcement and address environmental concerns.

We are jointly supporting information campaigns in Poland and Ukraine to discourage trafficking in women. US law enforcement experts visited the Europol Drugs Unit in January. A return visit by EU experts will take place in June. We have held expert level meetings on corruption and money-laundering under the auspices of the Multidisciplinary Group on Organised Crime. We have explored opportunities for cooperation on stolen vehicles. We have supported the Caribbean Drugs Initiative to tackle drugs trafficking in the Caribbean. We have begun a dialogue on follow-up to the Kyoto



Protocol on climate change. We are preparing cooperation on environmental protection in Central Asia. Specific projects are already addressing environmental issues in Brazil and Ukraine.

We have developed our bilateral trade and economic relationship and our cooperation on multilateral trade issues.

We have intensified our discussions on how to take forward our trade goals as set out in the New Transatlantic Agenda. We have worked together in the World Trade Organisation in preparation for the May Ministerial so as to lay the groundwork for further multilateral negotiations leading to broad based liberalisation and for the Summit celebrating the 50th Anniversary of the GATT. We have managed to defuse a number of potentially serious trade disputes. We have worked in various fora to advance our common goals on electronic commerce as agreed at the December 1997 Summit, including establishing a dialogue to address the free flow and protection of personal data. We are ready to sign a Positive Comity Agreement to enhance cooperation between our competition agencies. We have completed negotiation of a Veterinary Equivalency Agreement, which will facilitate transatlantic trade in animals and animal products. We have negotiated a parallel agreement on auto standards within the UN/ECE framework. We have cooperated to improve worldwide protection and enforcement of intellectual property rights. We are signing the Mutual Recognition Agreement and have advanced negotiations on two new sectors - veterinary biologics and fasteners.

We have strengthened links between our peoples.

We are presenting awards to 50 individuals and organisations who have promoted democratic values and civil society in their countries. We have agreed to provide around \$2.5 million each for joint civic education and civil society initiatives in Ukraine. We have urged the Transatlantic Business Dialogue to continue its important work strengthening transatlantic trade relations. We have encouraged the launch of other similar dialogues. Following its April meeting, the transatlantic Labour Dialogue (TALD) is being taken forward with action on several fronts, and we have agreed to organise a Consumer Dialogue. Our grant-giving foundations and NGOs have agreed to work together to better allocate scarce resources; a handbook of relevant EU and US NGOs and initiatives has been published. We held the first meeting of the Joint Committee on Higher Education and Vocational Training, which welcomed the solid achievements made in this field under the NTA.

We have involved our parliamentarians more closely in the EU/US process: an increased number of parliamentary visits took place; and an internship programme has been set up in the European Parliament and in the US Congress. As part of our implementation of the Science and Technology Cooperation Agreement signed in December 1997, we are holding in June an EU/US roundtable conference. We jointly organised a forum in Akron, Ohio, in February to look at ways to increase employability and tackle social exclusion. We have given support for the successful implementation of the Transatlantic Information Exchange Service (TIES), a mega-site on the Internet which will enable our NGOs to develop contacts and cooperate together.

#### New Priorities

For the next six months we will focus on the following:

##### I. Promoting Peace, Stability, Democracy and Development

Work together in the Former Yugoslavia, particularly Kosovo, Bosnia, and throughout the Western Balkans. Implement our programme of cooperation in Ukraine. Continue to work closely together on Cyprus and Turkey. Pursue with all parties concerned, in the first place

the Russian Federation, our joint agenda for nuclear waste management in Northwest Russia, and report on progress by the Spring 1999 EU/US Summit. Increase coordination on other nuclear safety issues. Put into practice the consultative mechanism set up to ensure better coordination of our efforts on the Middle East Peace Process. Continue to cooperate on Iran, particularly on issues of shared concern. Examine the possibility for cooperation on technical assistance to develop the rule of law in China. Continue to work together and with African partners to promote human rights, good governance and conflict prevention. Continue active consultations on UN reform and finances. Use our High Level Assistance Consultations in October to reinforce our cooperation on economic, development and humanitarian issues.

Assess ways of further enhancing our demining cooperation in specific areas such as mine action institutions and capacity building in afflicted countries, the development of appropriate technology and information exchange on mine-exporting countries. Work for the successful completion of the Biological Weapons Convention Protocol by the end of 1998. Further enhance our cooperation on non-proliferation and export controls. Consider scope for a joint EU/US code of conduct on arms exports. Consolidate cooperation in KEDO, together with Japan and the Republic of Korea, to ensure the continued viability of the organisation and success in meeting its objectives, thus promoting stability in Northeast Asia and strengthening global non-proliferation efforts. Continue cooperation to advance our goals on human rights and democracy in countries which are of mutual concern.

## II. Responding to Global Challenges

Continue to work closely together on counter-terrorism, exchanging information (eg on terrorism fundraising), raising awareness of new threats, and encouraging universal adherence to all 11 international conventions. Explore extending cooperation on drug issues in other regions such as Central Asia and Latin America, including the Andes. Maintain close cooperation between US law enforcement agencies and the EU Multidisciplinary Group on Organised Crime. In the light of our evaluation, consider whether to expand to other countries our initiative to discourage trafficking in women. Review the possibilities for cooperation on stolen vehicles.

Following signing of the charters inaugurating the Regional Environmental Centres (RECs) in Moldova, Georgia, Russia and Ukraine, ensure they become quickly operational and consider supporting the establishment of a Central Asia. Continue our dialogue on environmental issues, including on the Biosafety Protocol and the follow-up to the Kyoto Protocol. Work to resolve outstanding issues before the November climate change meeting in Buenos Aires. Plan for a Transatlantic Chemicals Conference. Focus the work of the Task Force on Communicable Diseases on surveillance of certain priority diseases, in particular foodborne diseases, and the problem of antimicrobial resistance, as well as on training exchanges, field investigations, and the exchange of information on outbreaks of diseases.

## III. Expanding World Trade and Closer Economic Relations

Follow up on our recent discussions on how to take forward our shared trade goals. Continue to implement our joint statement on electronic commerce, giving priority to the urgent issues of date privacy and domain name allocation. Continue to enhance our dialogue on regulatory issues, including those relating to biotechnology. Implement the MRA and seek early signature of the new annexes on veterinary biologics and fasteners. Identify ways of further deepening our cooperation on Intellectual Property Rights with respect to both bilateral and multilateral issues. Building on our ongoing bilateral consultations, explore ways to cooperate in a

mutually acceptable framework to develop a global navigation satellite system. Support the various projects of the Transatlantic Small Business Initiative, in particular the EU/US Partnering Meeting in Chicago which will bring together 400 small and medium-sized enterprises. Continue our exchange on macro-economic issues as the EU approaches the third phase of the Economic and Monetary Union (EMU).

Within multilateral fora, reaffirm the importance we attach to our efforts in the OECD to achieve a comprehensive multilateral framework for investment with high standards of liberalisation and investment protection that has effective dispute settlement procedures and is open to non-member countries. Pursue the current work programme on investment in the WTO. Once that programme has been completed, seek the support of all our partners for next steps towards the creation of investment rules in the WTO. Continue work on accession of new members. Pursue our common efforts in the WTO to conclude the negotiations, already well advanced, on expansion in the coverage of the Information Technology Agreement (ITA II). Work to implement the outcome of the May WTO Ministerial.

#### IV. Building Bridges

Under our Science and Technology Cooperation Agreement, encourage the launch of collaborative projects. Cooperate to ensure a successful, broad-based Vienna Conference on People-to-People Links in October. Implement our projects in Ukraine on civic education, municipal and public administration, transparency, and parliamentary exchange. Seek progress on the establishment of the Transatlantic NGO Dialogue on development, economic, and humanitarian assistance. Support the July visit by Supreme Court Justices to the European institutions.

Contribute to a successful TABC Conference in November and take its recommendations into account in our future work. Actively support the Consumer Dialogue following its launch this summer. Support the work of the Transatlantic Labour Dialogue. Hold a seminar on work organisation in Brussels in June, a conference on disability in the workplace in Madrid in October. Fully support the partnerships established at the Akron forum. Support the follow-up to the successful February symposium on Codes of Conduct and International Labour Standards.